



Wisconsin Department of Transportation

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ISSUED: February 26, 2003

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TO PROTESTORS:

African American Chamber of Commerce
Progressive Training Consultants

AND ATTACHED DISTRIBUTION LIST:

Enclosed is the decision of the procuring agency, the Wisconsin Department of Transportation (WISDOT), regarding the protests of the Notice of Intent to award the contract for RFP NO. 255079 to "4N CONSULTANTS (dba) d-BUSINESS CONSULTANTS" issued November 8, 2002.

The decision rejects all proposals. It is WISDOT's intent to issue a new RFP.

Pursuant to SECTION Adm 10.15(4), Wis. Admin. Code, a copy of this decision is mailed to the two protestors that filed timely protests. Copies are also mailed to other affected interests listed on the attached distribution list. The protestors may appeal this decision pursuant to SECTION Adm 10.15(5), Wis. Admin. Code:

"(5) Appeal. The protestor may appeal the decision of the procuring agency, provided the protestor alleges a violation of a statute or a provision of this chapter, to the secretary within 5 working days of issuance of the decision. The secretary, or designee, shall take necessary action to settle and resolve the protest and shall promptly issue a decision in writing which shall be mailed or otherwise furnished to the protestor."

Sincerely,

A handwritten signature in black ink that reads "James S. Thiel".

James S. Thiel
General Counsel
State Bar #1012582

Attachment: Distribution List
Enclosure: Decision

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Lynne Judd, Division of Transportation Districts
Gary Whited, Division of Transportation Infrastructure Development
Eugene Johnson, Disadvantaged Business Enterprise Office
Donna Brown, District #2, Waukesha
Diane Sachse, Purchasing Office

[illegible]

**Adm 10.15, Wis. Admin. Code
DBE Business Development
Program for Marquette
Interchange and SE Wisconsin
Freeway Work**

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for the procurement of contractual services, including but not limited to the approval and monitoring processes for contractual service contracts."

Rule DOA promulgated Chapter Adm 10, Wis. Admin. Code, for the procurement of contractual services. Section Adm 10.08, Wis. Admin. Code, deals with **competitive negotiation** or **requests for proposals**. It reads as follows:

"10.08 Competitive negotiation.

(1) Request for proposals (RFP). The preparation of an RFP is mandatory. The RFP shall be written in clear, concise and measurable terms. The RFP shall:

- (a) State the name and address of the contracting agency or the procuring agency, or both, and the names, addresses, titles and telephone numbers of persons to whom questions concerning the proposals should be directed;
- (b) State how sealed proposals are to be delivered, the date and time by which they must be received and the name and address of the person who is to receive them;
- (c) Contain the date and time of the pre-proposal conference, if any, and the period of the contract or contracts;
- (d) Clearly describe the scope of the services requested and shall provide prospective contractors with performance criteria, including quantity of each service required and delivery schedules for those services;
- (e) State the factors to be considered in evaluating proposals and the relative importance of each factor. Factors that may be considered when evaluating proposals include;

- 1. Responsiveness of the proposals. The proposal should clearly state the proposer's⁴ understanding of the work to be performed.
- 2. Technical experience and resources of the firm or individual submitting the proposal.
- 3. Experience and professional activities of the firm or individual submitting the proposal.
- 4. Size and structure of the firm or individual practice of the proposer.
- 5. Cost;

- (f) State that the procuring agency reserves the right to reject for cause any and all proposals submitted and to request additional information for purposes of clarification only from proposers; and
- (g) State that any award made shall be made to the firm which, based on the evaluation by the procuring agency, is best qualified.

(2) Legal notice. When the estimated cost exceeds \$10,000, a Class 2 notice under ch. 985, Stats., inviting competitive sealed proposals shall be published. The advertisement shall describe the services to be purchased, the intent to solicit proposals rather than bids, any requirement for surety and date the proposals will be opened.

(3) Proposal evaluation. Proposals shall be evaluated using a predetermined method to determine which proposer best meets the needs of the procuring agency. A description of the process of evaluation should be included with the RFP. The RFP should state, whenever possible, whether oral presentations by proposers will be part of the evaluation process.

⁴ ""Proposer" means a person or firm who submits a competitive proposal in response to a request for proposals (RFP)." Section Adm 10.03(8), Wis. Admin. Code.

(4) Evaluation committee. Before an RFP is distributed to prospective contractors, the procuring agency shall establish an evaluation committee. Each committee shall consist of 3 or a larger number of members, depending on the complexity and scope of services being procured. At least one member or a person advising the committee, shall be trained in procuring contractual services. An evaluation committee shall:

- (a) Review all proposals submitted in response to an RFP, using as a basis the evaluation criteria included in the RFP;
- (b) Conduct all formal, scheduled oral conferences and presentations with proposers that affect the evaluation process;
- (c) Keep accurate records of all meetings, conferences, oral presentations, evaluations and decisions;
- (d) Not disclose to any proposer any information obtained from any other proposer;
- (e) Give all proposers an equal opportunity to make a presentation, if presentations are permitted; and
- (f) Issue a final report and recommendation.

(5) Discussions with proposers. Fair and equal discussions may be conducted with all proposers for the purpose of clarification, and with proposers whose proposals are reasonably apt to be awarded the contract for the purpose of negotiating the best offer.

(6) Notice of intent. When the competitive negotiation process is used to procure services over \$10,000, a letter of intent to contract shall be sent by the contracting agency to the selected proposer. Copies of the letter of intent shall be sent to all other proposers in the evaluation process. All letters of intent shall be sent at least 5 days before the intended date of award.

(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because:

- (a) Mathematical errors were made in scoring proposals;
- (b) The award was recommended to a proposer who should have been disqualified as not responsive to all mandatory requirements of the RFP;
- (c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;
- (d) The evaluation committee failed to follow the evaluation criteria as set forth in the RFP; or
- (e) Violations of this chapter or the statutes have occurred.

(8) Conflict of interest. No person shall serve on an evaluation committee where the action of that committee might benefit that person, or a member of that person's immediate family as defined in s. 19.42 (7), Stats., or any organization or business with which that person is associated as defined in s. 19.42 (2), Stats."

Rule Section 10.10, Wis. Admin Code, deals with disclosure of potential conflicts of interest as follows:

Adm 10.10 Disclosure.

(1) Any bidder or proposer other than a political subdivision of the state shall include with a bid or proposal a written statement that discloses and provides relevant information on any of the following conditions that exist:

- (a) An officer or an employee of the contracting or procuring agency, or his or her immediate family, as defined in s. 19.42 (7), Stats., owns or controls, directly or indirectly, any equity, or is associated, as defined in s. 19.42 (2), Stats., with the bidder or proposer;
- (b) The bidder or proposer currently employs, or has offered or agreed to employ, any person who is or

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has been an officer or employee of the contracting or procuring agency within the 12 month period preceding the bid or proposal; or

(c) The bidder or proposer has a contract for contractual services with the contracting or procuring agency or provides services to, or anticipates providing services during the term of the contract to, a person or organization that is regulated by, or receives state funds from, the contracting or procuring agency.

(2) If none of the above conditions exist, the bidder or proposer shall include, with any bid or proposal, a written statement to that effect.

(3) The contracting or procuring agency shall review the statement and prepare a written determination on whether or not the information disclosed under sub. (1) interferes with fair competition and whether or not, in spite of the information disclosed, the awarding of the contract to the bidder or proposer will be in the best interests of the state.

(4) The department shall review the determination by the contracting or procuring agency. If the department does not concur in that determination, the department shall not approve the contract.

(5) All contracts shall provide that if the bidder or proposer has failed to disclose any conditions described in sub. (1), the contract may be declared to be void by the department and any amounts paid under the contract may be recovered as provided in s. 16.77 (2), Stats.

(6) No disclosure under sub. (1) (c) is required if a) state or federal law prohibits the disclosure, or b) the relationship does not create a conflict of interest and loss of independence, or the disclosure is improper under standards of professional conduct adopted by, or administrative rules of, the state agency or agency of the judicial branch that is responsible for regulating or licensing the occupational group of which the bidder or proposer is a member.

Rule Section 10.15, Wis. Admin Code, deals with protests of contractual services awards and reads as follows:

"10.15 Appeals.

(1) Right to protest. Any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation or a notice of intent to award a contract may protest to the procuring agency. The protestor shall file a notice of intent to protest in writing with the head of the procuring agency, or designee, within 5 working days after issuance of the solicitation, or after issuance of the letter of intent to award a contract, and shall serve the protest in writing on the head of the procuring agency, or designee, within 10 working days after issuance of the solicitation, or after issuance of the letter of intent to award a contract.

(2) Authority to resolve protests. The head of the procuring agency, or designee, shall have the authority to settle and resolve a protest of an aggrieved bidder or proposer concerning the solicitation or intent to award a contract.

(3) Decision. If the protest is not resolved by mutual agreement, the head of the procuring agency, or designee, shall promptly issue a decision in writing.

(4) Notice of decision. A copy of the decision shall be mailed or otherwise furnished to the protestor.

(5) Appeal. The protestor may appeal the decision of the procuring agency, provided the protestor alleges a violation of a statute or a provision of this chapter, to the secretary within 5 working days of issuance of the decision. The secretary, or designee, shall take necessary action to settle and resolve the protest and shall promptly issue a decision in writing which shall be mailed or otherwise furnished to the protestor.

(6) State of procurements during protests. In the event of the filing of a timely notice of intent to protest, protest or appeal under sub. (1), the state shall not proceed further with the solicitation or with the award of the contract until a decision is rendered in response to the protest or appeal, or unless the secretary, after consultation with the head of the contracting agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state."

Cases • Weight and Interpretation of Administrative Rules:

Burrus v. Goodrich, 194 Wis. 2d 654 (App) (1995), pp. 662-664, 535 N.W.2d 85, states that:

"In Wisconsin, administrative rules enacted pursuant to an agency's statutory powers have the force and effect of law. **Kranzush v. Badger State Mut. Casualty Co.**, 103 Wis. 2d 56, 77-78, 307 N.W.2d 256, 267-68 (1981)."

Kennedy v. DHSS, 199 Wis. 2d 442 (1996) contains the following guidance:

"We interpret administrative rules using the same rules of statutory construction." P. 448

• Reasonable Discretion in Public Competitive Negotiation:

Power Systems Analysis v. City of Bloomer, 197 Wis. 2d 817, 824 (1995) emphasizes the authority of governmental bodies to exercise reasonable discretion in public bidding or competitive negotiations to benefit the public:

"FOOTNOTE 5 In **State ex rel. Hron Bros. v. Port Washington**, 265 Wis. 507, 509-10, 62 N.W.2d 1, 2 (1953), our supreme court, interpreting § 62.15, Stats., stated that when the powers conferred on a municipal body involve the use of discretion, the courts will not question its exercise except for an abuse equivalent to fraud. Furthermore, the court stated: "[W]hen the authority conferred was to let the contract to the lowest responsible bidder the courts very properly hold that the power thus conferred implies the exercise of discretion which will not be interfered with by the courts." Id. at 510, 62 N.W.2d at 2 (emphasis in original). While these statements suggest a city's exercise of discretion will be upheld absent serious error, a more recent supreme court case indicates that judicial review of bidding decisions is appropriate, although such review is "generally limited to determining whether the bidding authority acted in an arbitrary or unreasonable manner." **Aqua-Tech, Inc. v. Como Lake Protect. & Rehab. Dist.**, 71 Wis. 2d 541, 550-51, 239 N.W.2d 25, 30 (1976).

Aqua-Tech, Inc. v. Como Lake Protect. & Rehab. Dist., 71 Wis. 2d 541, 50-51, 239 N.W.2d 25, 30 (1976) states:

"The cited cases demonstrate a reluctance on the part of the judiciary to interfere

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with the discretion which is vested in a public bidding authority. This reluctance is based primarily on the principle that statutory bid requirements are intended for the benefit and protection of the public and not of the individual bidder and that the lowest bidder has no fixed, absolute right to the contract."

- Elements of Fraud:

Batt v. Sweeney, 254 Wis.2d 721, 647 N.W.2d 868 (2002) states:

"¶ 13 The elements of fraud are a false representation made with intent to defraud and reliance by the injured party on the misrepresentation. *Ritchie v. Clappier*, 109 Wis.2d 399, 404, 326 N.W.2d 131 (Ct.App.1982)."

Gardner v. Gardner, 190 Wis.2d 216, 243, 527 N.W.2d 701 (1994) states:

"The elements of fraud require a false representation of fact made with intent to defraud and reliance by the injured party on the misrepresentation. The reliance must be justifiable." *Loula v. Snap-On Tools Corp.*, 175 Wis.2d 50, 54, 498 N.W.2d 866, 868 (Ct.App.1993) (citation omitted).

- False Representation:

D'Huyvetter v. A.O. Smith Harvestore, 164 Wis. 2d 306, 320, 475 N.W.2d 587 (1990) emphasizes the general rule regarding the requirement that false representations must relate to present facts:

"Generally, the false representation must relate to present or pre-existing facts and cannot be merely unfulfilled promises or statements of future events. **Hartwig v. Bitter**, 29 Wis. 2d 653, 656, 139 N.W.2d 644, 646 (1966); **Lundin**, 124 Wis. 2d at 192, 368 N.W.2d at 684."

- Collusion:

"Collusion is an agreement between two or more persons to defraud another of his rights by the forms of law or to secure an object forbidden by law. Collusion, so far as the law is concerned, has been deemed to be a species of fraud." 37 Am Jur 2d, **Fraud and Deceit, Definitions and Types of Fraud, § 5 Collusion**

- Question of Fact or Law:

37 Am Jur 2d, FRAUD AND DECEIT, False Representations, § 59 Questions of law and fact, reads in part:

"Issues of fact are presented upon a conflict in the evidence as to whether a representation alleged to have been made by a party charged with fraud was in fact made by that party and whether it is false. On the other hand, the

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question whether a representation is actionable as a fraud...may be entirely one of law, as where a representation was only a statement of the opinion or belief of the person making it, not to be relied upon as a statement of fact. Moreover, the materiality of a false representation may sometimes be determined by a court as a question of law.”

II. FINDINGS OF FACT. I make the following findings of fact:

On **September 30, 2002**, WISDOT issued a Request for Proposal (RFP), #255079, dated **October 1, 2002**, for DBE Business Development Program for Marquette Interchange Project and Southeast Wisconsin Freeway Work. On **October 16, 2002**, WISDOT issued Addendum No. 1 to the RFP consisting of submitted written questions and subsequent answers as well as the questions and answers from an October 14, 2002 proposer conference on this RFP.

Timely proposals were received by **October 31, 2002**. WISDOT determined that interviews were not needed. WISDOT applied the predetermined evaluation criteria as stated in the RFP, scored the technical aspects of the proposals first, then the costs second, and combined the scores for totals as follows:

<u>PROPOSER</u> ⁶	<u>AVERAGE</u> ⁵		<u>TOTAL</u>
	<u>TECH SCORE</u>	<u>COST SCORE</u> ⁷	
4N Consultants/d-Business	779	85	864
SFS Group Ltd.	656	90	746
Progressive Training Consultants	641	78	719
Aragon Mgmt. & Tech. Trng.	549	100	649
DAAR Engineering	492	88	580
Heartland Information	464	90	554
B-TEAM Structural Management	446	87	533
Spirit Winds Consulting	312	93	405

The score sheets are attached as **Exhibit A**.

The evaluation committee recommended the award of the contract to 4-N Consultants. By letter dated Friday, **November 8, 2002**, WISDOT issued a Notice of Intent to award the contract to 4N Consultants/d-Business. The Notice of Intent letter is addressed to “4N CONSULTANTS (dba) d-BUSINESS CONSULTANTS.” The other proposers were notified by letter of the intent to award the contract to 4N Consultants on the same date. Also on November 8, 2002, two of the

⁵ Average score of all raters.

⁶ Proposer names are abbreviated for convenience for listing in this table and are not the full official names of the entities making the proposal.

⁷ Mathematical calculation by formula.

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proposers were notified both of the intent to award and the rejection of their proposals as not responsive to mandatory requirements of the RFP: African American Chamber of Commerce and Community-Based Employment & Referral Services.

On Friday, **November 15, 2002**, timely⁸ **notices of intent** to protest were received by WISDOT from the following proposers⁹:

Community Based Employment & Referral Services
African American Chamber of Commerce
SFS Group Ltd.
Progressive Training Consultants

On Friday, **November 22, 2002**, timely¹⁰ **protests** were received from the following proposers:

African American Chamber of Commerce
Progressive Training Consultants

On **November 25, 2002**, a protest was received by FAX and hand delivered in person from counsel for the following proposer:

⁸ "Section Adm 10.15(1), Wis. Admin. Code:

- (1) Right to protest. Any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation or a notice of intent to award a contract may protest to the procuring agency. **The protestor shall file a notice of intent to protest in writing with the head of the procuring agency, or designee, within 5 working days** after issuance of the solicitation, or **after issuance of the letter of intent to award a contract**, and shall serve the protest in writing on the head of the procuring agency, or designee, within 10 working days after issuance of the solicitation, or after issuance of the letter of intent to award a contract."

⁹ Notice of intent to protest received on that date by e-mail from Vanguard, Inc., but is not a "proposer."

¹⁰ "Section Adm 10.15(1), Wis. Admin. Code:

- (2) Right to protest. Any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation or a notice of intent to award a contract may protest to the procuring agency. **The protestor shall file a notice of intent to protest in writing with the head of the procuring agency, or designee, within 5 working days** after issuance of the solicitation, or after issuance of the letter of intent to award a contract, and **shall serve the protest in writing on the head of the procuring agency, or designee, within 10 working days** after issuance of the solicitation, or **after issuance of the letter of intent to award a contract**."

SFS Group Ltd.

SFS Group Ltd. did not “serve the protest in writing on the head of the procuring agency...within 10 working days ... after issuance of the letter of intent to award a contract.” The protest would be timely only if Monday, November 11, 2002, Veterans Day is not considered a “working day.” Although November 11 is a “legal holiday” under Wis. Stat. 895.20, November 11, 2002, Veterans Day is a “working day” for the State of Wisconsin. It is **not** a state holiday under Wis. Stat. 230.35(4)(a). It is a “working day” under Wis. Stat. 227.01(14). Under Wis. Stats. 985.09(2) and 990.001(4)(b), in computing time, a “legal holiday” is excluded from the count only if it falls on the last day in which the act is to be done. The last day for serving a protest on WISDOT was November 22, 2002 and that is not a “legal holiday.” WISDOT received supplements to the protest of SFS Group Ltd. on **December 5 and December 9, 2002**. A different counsel and law firm submitted the supplements.

WISDOT also received correspondence from Representative G. Spencer Cogg November 19, 2002 and from Representative Wayne Wood December 17, 2002 questioning the intent to award the contract to 4N Consultants. The Governor’s office received copies of the December 5 and December 9 supplements to the untimely protest of SFS Group, Ltd., and faxed them to me at my request December 19, 2002 without comment.

By letter dated **December 30, 2002**, counsel for 4N Consultants/d-Business requested copies of all protests and an opportunity to respond. Its response was received **January 16, 2003**.

III. SUMMARY OF RFP INCLUDING ADDENDUM.

The intent of the RFP is to contract for a Disadvantaged Business Enterprise¹¹ (DBE) Development program targeted at the Marquette Interchange work and, eventually, Southeast Wisconsin Freeway work of WISDOT. The estimated cost of the work on the Southeast Wisconsin Freeway System, including the Marquette Interchange was estimated as \$6.25 billion. Work costs for the Marquette Interchange alone were estimated to range from \$760 million to \$890 million. In brief, the contracted services expected include (1) a determination of the existing capacity of DBE firms to participate in this work, and (2) an effective way to increase and further develop the capacity of DBE firms for the purpose of participating in this work. SECTIONS 1.1 to 1.3.¹²

The contract is to run for one year and may be renewed up to 4 additional one-year periods with a budget for the first year of \$350,000 to \$450,000. SECTION 1.8.

¹¹ Disadvantaged Business Enterprises are defined by federal law and consist of businesses owned and controlled by certain minorities; females or other socially and economically disadvantaged individuals. See 49 CFR Part 26 and Wis. Stats. 84.072 and 84.076. Federal law requires, as a condition of using federal funds, that WISDOT establish goals for the participation of disadvantaged businesses or the employment of disadvantaged individuals in projects using federal funds.

¹² All SECTION references are to the numbered paragraphs of RFP 255079 issued October 1, 2002 attached to the standard RFP 255079 forms.

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A number of requirement statements in the RFP state that failure to comply may or shall result in rejection of a proposal, including the following:

- SECTION 2.1 “Failure to respond to each of the requirements in the RFP **may** be the basis for rejecting a proposal.”
- SECTION 2.4 “Proposers responding to the RFP **must** comply with the following **format** requirements:”
- SECTION 3.2 “The proposals will be initially reviewed to determine if **mandatory** requirements are met. Failure to meet **mandatory** requirements shall result in the proposal being rejected.”
- SECTION 4.0 “The following **mandatory** requirements **must** be complied with. Failure to meet a mandatory **shall** result in the rejection of your proposal.”
- SECTION 8.0 “Failure to submit all forms **may** result in rejection of your proposal.”
- ATTACHMENT C 4.0* *MANDATORY REQUIREMENTS

SECTIONS 3.3 to 3.4 and 7.0 described the proposal scoring procedure and evaluation and cost criteria.

SECTION 3.7 “Right to reject proposals and negotiate contract terms” reads in part as follows:

“The agency reserves the right to reject any and all proposals. The agency reserves the right to negotiate the terms of the contract, including the award amount, with the selected proposer prior to entering into a contract.”

Standard RFP language on page 5, “Standard Terms & Conditions” includes the following statement:

- 8.0 ACCEPTANCE-REJECTION. “The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interest of the State of Wisconsin.”

Standard RFP language on page 7, “Supplemental Standard Terms and Conditions for Procurements for Services” includes the following statements:

- 3.1 “Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.”

The October 16, 2002, Addendum No. 1 to the RFP consists of submitted written questions and subsequent answers as well as the questions and answers from an October 14, 2002 proposer

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conference on this RFP. This Addendum is expressly added to and made part of the RFP. The following questions and answers from the October 14, 2002 proposer conference are included in the Addendum:

- 1. “On Page 10 under mandatory requirements,¹³ it says provide a point-by-point response to each and every mandatory response. But, the second sentences says failure to meet a mandatory...what do you want?”

“We give the option to state ‘comply’ or ‘not comply.’ But to be a legitimate contractor for this program, proposer must comply with all items.”

- 2. “For the financial responsibility, tab 2 of the proposal format: If you are bidding as a team, do you need financial statements from all the team members or just one team member?”

If you are proposing as a partnership, joint venture, or team, include under Tab 2 of your proposal either the financial statement or bank letter from the new legal entity or the lead entity, whichever would be the contractor of record if awarded the contract.”

The following submitted written questions and answers are also included in the Addendum:

- 1. “Under item 4 Mandatory Requirements, in answering the ten requirements you only need to say “comply” or “not comply” without giving details on how you comply or not comply. Is my understanding correct?”

“Note: Section 4.0 Mandatory Requirements has 13 requirements, not 10.

Yes, for this section proposer will list each requirement and “comply” or “not comply” under Tab 3 of your proposal. That is all that is needed under this tab to verify that proposer will comply with all the requirements if awarded the contract.

Whereas, section 6.0 asks the proposer to detail approach, tasks, work plan, understanding, etc. for the needed contract requirements of section 4.0 (same items listed as Objectives & Needs in section 1.3.2). List these details under Tab 5 of our proposal.”

- 11. “Is there a model used for the creation of this RFP. If so, is it available?”

“Yes, see the attached handout, “Proposed Model for Removal of Barriers Confronted by DBE Firms.”

IV. DISCUSSION OF PROTESTS: ADDITIONAL FINDINGS AND CONCLUSIONS.

¹³ Page 10 refers to SECTION 4.0, Mandatory Requirements.

There are only two timely protests from proposers:

African American Chamber of Commerce, and
Progressive Training Consultants

• African American Chamber of Commerce Protest. On November 8, 2002, WISDOT notified African American Chamber of Commerce that its proposal was rejected as not responsive to mandatory requirements of the RFP¹⁴. **Exhibit B**. African American Chamber of Commerce does not protest the rejection of its bid, but rather the award to 4N Consultants/d-Business. **Exhibit C**. The reasons for rejection offered by African American Chamber of Commerce are summarized below followed by WISDOT's findings and conclusion:

1. Failure to comply with Supplemental Standard Terms and Conditions 3.1 regarding certification of fair competition or conflict of interest:

"Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state."

There is no specific certification in the standard RFP certification statements that accompany all proposals that tracks the precise language in Supplemental Standard Terms and Conditions 3.1. The closest certification is the following:

"I/We certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other bidder, competitor, or potential competitor, that this bid has not been knowingly disclosed prior to the opening of bids of any other bidder or competitor, that the above statement is accurate under penalty of perjury.

We will comply with all terms, conditions, and specifications required by the State of Wisconsin in the request for bids and all terms of our bid."

¹⁴ In brief, WISDOT stated that SECTIONS 4.0 and 6.2 were not responded to within its proposal and the organization and format of the proposal did not follow that required under SECTION 2.4. There is adequate support for the rejection of this proposal as stated in the RFP text itself:

- SECTION 2.1 "Failure to respond to each of the requirements in the RFP may be the basis for rejecting a proposal."
- SECTION 2.4 "Proposers responding to the RFP must comply with the following format requirements:"
- SECTION 3.2 "The proposals will be initially reviewed to determine if mandatory requirements are met. Failure to meet mandatory requirements shall result in the proposal being rejected."
- SECTION 4.0 "The following mandatory requirements must be complied with. Failure to meet a mandatory shall result in the rejection of your proposal."

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4N Consultants by Jaya Sharma signed this certification twice on October 31, 2002. There is no other certification other than the above in the proposals submitted by SFS Group Ltd. or Progressive Training Consultants, Inc., the next highest scorers. Both of these entities also disclosed that they had current contracts with WISDOT and signed the same certification, as did 4N Consultants. If this certification were inadequate, then it would be inadequate for all the proposals. All consultants signed statements that certify they “will comply with all, terms, conditions, and specifications required by the State of Wisconsin in the request for bids and all terms of our bid.” No other separate certification has ever been routinely required or included in standard RFP documents. This is the non-collusion certification required by PRO-C-4, I. of the State Procurement Manual. This statement or certification includes compliance with Supplemental Standard Terms and Conditions 3.1.

It is my conclusion that this standard certification complies with and fulfills Supplemental Standard Terms and Conditions 3.1.

2. Evidence of collusion and fraud under Wis. Admin. Code 10.08(7)(c):

“(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because: ...

(c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;”

African American Chamber of Commerce alleges as its evidence of collusion or fraud involving 4N Consultants that Jaya Sharma was a paid consultant staff to the SE Marquette Interchange Project DBE Program Advisory Committee also referred to as the Marquette Interchange Advisory Committee, created documents to build capacity of DBE firms that led to the RFP, and has ongoing relationships with panelist and proposal evaluation members, and was associated with Alderman Terrance Herron as Co-Chair of the Advisory Committee that began to create unfair competition for the proposal amounting to collusion.

WISDOT was aware that Jaya Sharma was paid as consultant staff to the Committee by WISDOT, helped develop the model to build capacity with the Committee, worked with WISDOT staff and was formerly employed by WISDOT until March 23, 2001, and worked with Alderman Terrance Herron.

However, the model in question that was developed was also provided to all potential proposers with the October 16, 2002 Addendum to the RFP. It is also noteworthy that the members of the Committee not only included Alderman Terrance Herron, but also Richard Bowles and Marty Payne of Progressive Training Consultants, Inc., the third highest scorer. Progressive Training Consultant, Inc., also contracted with WISDOT to develop the predecessor to the current DBE capacity building program, to work on a Native American Program, and in a joint venture on an existing DBE capacity building program. Similarly SFS Group Ltd., the second highest scorer, has had ongoing relations with WISDOT staff for about 8 years through its ongoing contract with WISDOT for financial planning and management consultation for DBE firms and its administration of WISDOT’s DBE mobilization loan guarantee program. If these relationships, as alleged, were

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considered to be persuasive evidence of collusion or fraud, the second and third highest scorers would be subject to the similar allegations and evidence of collusion or fraud.

The response of counsel for 4N Consultants of January 13, 2003 states that Jaya Sharma was not involved in preparation of the RFP. **Exhibit D.** It also states that copies of the model were not only mailed out with the Addendum to all those who requested an RFP, but were also provided at the proposer's conference on October 14, 2002. That is a correct statement. The letter alleges that representatives of SFS Group Ltd. and Progressive Training Consultants, Inc., were also at most meetings of the Committee and had opportunities to make suggestions to the Committee. And the letter states that there is no evidence found of a "direct business relationship" between Alderman Herron and Jaya Sharma. Although not alleged as creating any impropriety, WISDOT is aware that Jaya Sharma and 4N Consultants did have a direct business relationship with Progressive Training Consultants.

There is no evidence that there was any false representation or misrepresentation or failure to disclose by 4N Consultants. No false representation was made to WISDOT with intent to defraud WISDOT nor reliance by WISDOT on any misrepresentation. Close association with a particular type of work and experience in a particular geographic area are advantageous when competing for a contract; they are not necessarily an unfair advantage. There is no clear evidence that 4N Consultants obtained an undue advantage by means of some act or omission that is unconscientious or a violation of good faith.

I find no evidence of fraud or collusion and conclude that there is no basis for a change of the award under Wis. Admin. Code 10.08(7)(c). Prior dealings with WisDOT, current contracts with WISDOT, or membership or employment by WISDOT on advisory committees are not persuasive evidence of fraud or collusion. Allegations alone are not evidence.

3. Failure to disclose relevant information and provide a written determination under Wis. Admin. Code 10.10(1)(c) and (3):

"(1) Any bidder or proposer other than a political subdivision of the state shall include with a bid or proposal a written statement that discloses and provides relevant information on any of the following conditions that exist:

....

- (c) The bidder or proposer has a contract for contractual services with the contracting or procuring agency or provides services to, or anticipates providing services during the term of the contract to, a person or organization that is regulated by, or receives state funds from, the contracting or procuring agency."

"(3) The contracting or procuring agency shall review the statement and prepare a written determination on whether or not the information disclosed under sub. (1) interferes with fair competition and whether or not, in spite of the information disclosed, the awarding of the contract to the bidder or proposer will be in the best interests of the state."

On pages 4 and 5 of TAB 4 of the proposal of 4N Consultants/d-Business is the following written disclosure:

"She [Jay Sharma, President, 4N Consultants] is also currently under contract with the State

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Wisconsin (sic), Department of Transportation, DBE Programs Office, to provide technical assistance and support to the Marquette Interchange DBE Business and Labor Advisory Committees.”

Hence, a disclosure was made as required by Wis. Admin. Code 10.10(1)(c). I have found no separate written determination by WISDOT on whether this relationship interferes with fair competition as required by 10.10(3). The encumbrance for the purchase order for a current contract with 4N Consultants established on August 27, 2002 is described as “Model for DBE Participation” with Project ID 0667-09-41. Cost details attached to invoices for this project do indicate that 4N Consultants did participate in developing a model for barrier removal and discussions of the RFP for business capacity building. The face of the Purchase Order reads: “Consulting Services, Technical Assistance and Model Development for DBE Participation on Major Transportation Projects for the Period of August 2002 thru January 2003.”

I have found nothing that would prevent me on behalf of WISDOT from making a written determination now on whether or not the information disclosed interferes with fair competition and whether or not, in spite of the information disclosed, the awarding of the contract to the proposer will be in the best interests of the state.

It is noteworthy that similar disclosures were made by SFS Group Ltd. at pages 1, 2, 8, and 11 of Tab 4 of its proposal. For example, consider the following:

“...SFS Group Ltd. (SFS) has provided one-on-one management advisory services, needs assessments and technical assistance since 1994 to WisDOT certified DBEs and has administered the WisDOT Mobilization Guarantee Program.

SFS also is the statewide service provider for administering the WisDOT’s Mobilization Loan Guarantee Program. As an extension of the WisDOT Support Services, SFS provides professional assistance and services to DBE firms....”

Progressive Training Consultants made similar disclosures at pages 7, 8 and 9 of Tab 4 of its proposal. For example, consider the following:

“In the year 2000, PTC entered into a joint venture with Milwaukee First, Inc. (MFI) and secured a WisDOT contact to deliver a Capacity Building Program (CBP) for DBEs; a contract that is currently in the third option year. As a result of its current contract with WisDOT, and its work since 1987, PTC has developed, tested and refined a DBE capacity building model that delivers comprehensive MBE business development services.”

It is hereby determined in writing by WISDOT that the information disclosed by all three of above proposers does not interfere with fair competition and, in spite of the information disclosed, if they had otherwise scored the highest, the award of the contract to any of these proposers would have been in the best interests of the state.

- Progressive Training Consultants Protest. Progressive Training Consultants protests the

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award to 4N Consultants/d-Business. **Exhibit E.** The reasons for rejection offered by Progressive Training Consultants are summarized below followed by WISDOT's findings and conclusions:

1. Mathematical Errors In Scoring Under Wis. Admin. Code 10.8(7)(a):

"(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because: ...

(a) Mathematical errors were made in scoring proposals;"

Progressive Training Consultants states that the score calculated for the cost portion of 4N Consultants score is erroneous because it does not include \$95,000 in additional allowances. Assuming, without deciding, that Progressive Training Consultant's allegation is correct, adding \$95,000 to the 4N Consultant cost does not change the result. The cost score would be reduced to 69 and the total score of 4N Consultants would be reduced to 848. However, 4N Consultant's total score would remain far higher than the next highest total score, i.e. SFS Group Ltd. at 746. Even if 4N Consultants score were reduced to 0 because its cost is over the budget of \$450,000 for the first year, the total score would be 779 and would remain higher than the next highest total score, i.e. SFS Group Ltd. No language in the RFP states a proposal that is over the funding of "\$350,000-\$450,000 for the first year" shall or may be rejected as not responsive or responsible. In addition, WISDOT could easily cap the contract at \$450,000 for the first year in the contract itself to keep it within budget. SECTION 3.7 of the RFP reads in part:

"...The agency reserves the right to negotiate the terms of the **contract**, including the award amount, with the selected proposer prior to entering into a **contract**." (Emphasis added.)

It is concluded that a change in the award to 4N Consultants would not be warranted even if \$95,000 were added to its cost proposal.

2. Evidence of collusion and fraud under Wis. Admin. Code 10.08(7)(c):

"(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because: ...

(c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;"

The allegations of Progressive Training Consultants regarding collusion and fraud are very similar to those advanced by African American Chamber of Commerce. In addition, Progressive Training Consultants alleges:

"Without the knowledge of Co-Chair [of the Advisory Committee] Coggs, and with the assistance of Attorney Sharma, Co-Chair Herron corresponded with WisDOT staff to secure funding and the issuance of the subject RFP. Additionally, official members of the Advisory Committee were not informed of the issuance of the subject RFP, nor funding, until after the RFP was publicly released."

As noted above, the members of this Advisory Committee not only included Alderman Terrance Herron, but also Richard Bowles and Marty Payne of Progressive Training Consultants, Inc., the third highest scorer.

The response of counsel for 4N Consultants of January 16, 2003 states that Jaya Sharma was not involved in preparation of the RFP. It also states that copies of the model were not only mailed out with the Addendum to all those who requested an RFP, but were also provided at the proposer's conference on October 14, 2002. That is a correct statement. The letter alleges that that representatives of SFS Group Ltd. and Progressive Training Consultants, Inc. were also at most meetings of the Committee and had opportunities to make suggestions to the Committee. And the letter states that there is no evidence found of a "direct business relationship" between Alderman Herron and Jaya Sharma. Although not alleged as creating any impropriety, WISDOT is aware that Jaya Sharma and 4N Consultants did have a direct business relationship with Progressive Training Consultants.

There is no reason to believe that any member of the Advisory Committee or the public was ever prohibited from urging WISDOT to issue an RFP for the purposes of developing the capacity of Disadvantaged Businesses Enterprises to participate in the upcoming Marquette Interchange or South East Wisconsin Freeway work. Perhaps others also urged WISDOT to issue such an RFP. Such requests to governmental entities are certainly not uncommon.

There is no evidence that 4N Consultants made any false representation or misrepresentation or failed to disclose information as required. There is no persuasive evidence that 4N Consultants obtained an undue advantage by means of some act or omission that is unconscientious or a violation of good faith.

I find no evidence of fraud or collusion and conclude that there is no basis for a change of the award under Wis. Admin. Code 10.08(7)(c).

3. Not responsive to mandatory requirement under Wis. Admin. Code 10.08(7)(b):

(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because:

...

(b) The award was recommended to a proposer who should have been disqualified as not responsive to all mandatory requirements of the RFP;

Progressive Training Consultants alleges that 4N Consultants did not provide financial stability documentation as required.

SECTION 2.4 of the RFP reads in part:

"Proposers responding to the RFP **must** comply with the following **format** requirements:

...

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(b) Tab 2 – FINANCIAL STABILITY DOCUMENTATION: Proposers responding to this RFP **must** be able to substantiate their financial stability by submitting either financial statements or a letter from proposer’s bank verifying financial stability. The State may request additional reports on financial stability from an independent financial rating service in order to further substantiate stability.” (Emphasis added.)

Financial stability is not listed as one of the mandatory requirements under SECTION 4.0 Mandatory Requirements.

However, SECTION 2.1 states that “Failure to respond to each of the **requirements** in the RFP **may** be the basis for rejecting a proposal.”

The October 16, 2002, Addendum No. 1 to the RFP consists of submitted written questions and subsequent answers as well as the questions and answers from an October 14, 2002 proposer conference on this RFP. This Addendum is expressly added to and made part of the RFP. The following questions and answers from the October 14, 2002 proposer conference are included in the Addendum:

- 2. “For the financial responsibility, tab 2 of the proposal format: If you are bidding as a team, do you need financial statements from all the team members or just one team member?”

If you are proposing as a partnership, joint venture, or team, include under Tab 2 of your proposal either the financial statement or bank letter from the new legal entity or the lead entity, whichever would be the contractor of record if awarded the contract.”

“4N Consultants, Inc. d/b/a d-Business Development Consultants LLC” is the entity that submitted the proposal to WISDOT as shown on the first page of the official response and certification form and on the Addendum.

The financial statement at Tab 2 of 4N Consultants response to the RFP is a letter of October 30, 2002 from Wauwatosa Savings Bank stating that “David W. Stokes, President of DWS & Co, Inc.” is financially responsible. No other financial stability information is provided at Tab 2. No additional financial responsibility information for the proposing entity “4N Consultants, Inc. d/b/a d-Business Development Consultants, LLC” is provided in the response submitted by 4N Consultants on January 16, 2003.

4N Consultants failed to respond to the financial stability requirement of the RFP as clarified in the answer to question 2 in the Addendum. The original RFP language makes a distinction between mandatory requirements and other requirements. Failure to comply with any mandatory requirement SHALL result in rejection of a proposal while failure to meet any other requirement MAY result in rejection of a proposal.

SECTION 3.2 of the RFP states:

“The proposals will be initially reviewed to determine if mandatory requirements are met. Failure to meet mandatory requirements shall result in the proposal being rejected.”

WISDOT's initial review of the proposal of 4N Consultants did not result in its rejection for failure to meet a mandatory requirement. A recent check of Department of Financial Institutions records indicates that d-Business Development Consultants, LLC was organized on October 22, 2002 with the same registered effective date. 4N Consultants, Inc. is shown as having incorporated, qualified, and registered as of January 11, 2000.

- SFS Group Ltd. Protest. On **November 25, 2002**, a protest was received by FAX and also in original hard copy form from counsel for the following proposer:

SFS Group Ltd.¹⁵

Section Adm 10.15(1), Wis. Admin. Code reads as follows:

"Right to protest. Any bidder or proposer or labor organization or organizations representing the appropriate certified state collective bargaining unit or units who is aggrieved in connection with a solicitation or a notice of intent to award a contract may protest to the procuring agency. **The protestor** shall file a notice of intent to protest in writing with the head of the procuring agency, or designee, within 5 working days after issuance of the solicitation, or after issuance of the letter of intent to award a contract, and **shall serve the protest in writing on the head of the procuring agency, or designee, within 10 working days** after issuance of the solicitation, or **after issuance of the letter of intent to award a contract.**

The letter of intent to award a contract to 4N Consultants was issued Friday, **November 8, 2002**. The other proposers were notified by letter of the intent to award the contract to 4N Consultants by separate letters issued on the same date, **November 8, 2002**. Monday, **November 25, 2002** is not within 10 working days after issuance of the letter of intent to award a contract. This protest is untimely. It is timely only if Monday, November 11, 2002, Veterans Day is not considered a "working day." Although November 11 is a "legal holiday" under Wis. Stat. 895.20, November 11, 2002, Veterans Day is a "working day" for the State of Wisconsin. It is **not** a state holiday under Wis. Stat. 230.35(4)(a). It is a "working day" under Wis. Stat. 227.01(14). Under Wis. Stats. 985.09(2) and 990.001(4)(b), in computing time, a "legal holiday" is excluded from the count only if it falls on the last day in which the act is to be done. The last day for serving a protest on WISDOT was **November 22, 2002** and that is not a "legal holiday." WISDOT received supplements to the untimely protest of SFS Group, Ltd. on **December 5 and December 9, 2002**. A different counsel and law firm submitted the supplements.

In general, the allegations in this untimely protest are similar to those in the above protests for which responses have been provided. Counsel for 4N Consultants also indicates it sent a copy of its **January 16, 2003** response to counsel for SFS Group Ltd.

SFS Group Ltd., however, also questions the unbiased and neutral scoring of at least one member of the evaluation panel. I have chosen not to ignore such a serious allegation, even though

¹⁵ It is noted that Department of Financial Institutions records indicate that SFS Group Ltd was delinquent on October 1, 2002 and was restored to good standing on November 19, 2002.

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the protest is untimely and even though PRO-I-13, I. of the State Procurement Manual states the “subjective judgment of evaluators is not appealable.” As evidence of bias SFS Group Ltd. points to the score given by this evaluator on item 6.2.1 as 200 for 4N Consultants and a score of 60 on the same item for SFS Group Ltd. WISDOT finds that even if all of the scores of this evaluator were completely eliminated, 4N Consultants would remain the highest scorer at 761 and SFS Group would be 703 and Progressive Training, 624. SFS also circles the scores provided by another evaluator to indicate some question. If this evaluator’s scores were also completely eliminated along with the first evaluator above mentioned, 4N Consultants would remain the highest scorer at 765 and SFS Group would be 732 and Progressive Training, 679. If the cost scores are added to the above, the following results are obtained:

4N Consultants:	$761+85 = 846$	$765+85 = 850$
SFS Group Ltd:	$703+90 = 793$	$732+90 = 822$
Progressive Training:	$624+78 = 702$	$679+78 = 757$

And if 4N Consultants cost score were reduced to 69, it would still score 830 or 834 and still remain the highest scorer.

There is no persuasive evidence of bias or unfairness in the scoring of the evaluation panel.

V. REJECTION OF ALL PROPOSALS.

Section Adm 10.08(10(f) Wis. Admin. Code requires all RFPs to reserve to the right to the procuring agency [WISDOT] to reject all proposals. It reads as follows:

"10.08 Competitive negotiation.

- (2) Request for proposals (RFP). The preparation of an RFP is mandatory. The RFP shall be written in clear, concise and measurable terms. **The RFP shall:**

(f) **State that the procuring agency reserves the right to reject for cause any and all proposals submitted** and to request additional information for purposes of clarification only from proposers; (Emphasis added.)

SECTION 3.7 of the RFP entitled, “Right to reject proposals and negotiate contract terms” reads in part as follows:

“The agency reserves the right to reject any and all proposals. The agency reserves the right to negotiate the terms of the contract, including the award amount, with the selected proposer prior to entering into a contract.”

Standard RFP language on page 5, “Standard Terms & Conditions” includes the following statement:

8.0 ACCEPTANCE-REJECTION. “The State of Wisconsin reserves the right to accept or

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reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interest of the State of Wisconsin.”

4N Consultants failed to respond to the financial stability requirement of the RFP as clarified in the answer to question 2 in the Addendum. I decline to exercise the discretionary authority to reject 4N Consultants proposal on this basis. This was a requirement, but not a mandatory requirement listed in SECTION 4. I also decline to change the award for failure to meet any mandatory requirements under Section Adm 10.08 that reads as follows.

(7) Contract award. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because:

....

(b) The award was recommended to a proposer who should have been disqualified as not responsive to all **mandatory** requirements of the RFP;

The financial requirement was not mandatory; it was however a requirement. It is clear that the proposal of 4N Consultants was considered and scored substantially superior to the other proposals by the evaluation committee.

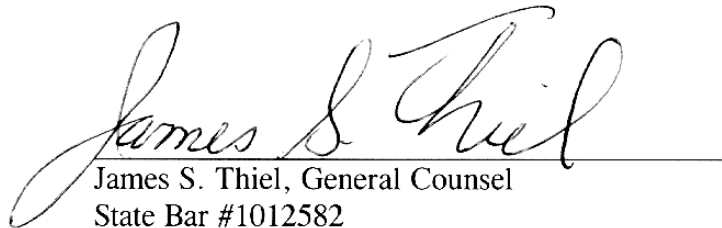
The Wisconsin Administrative Code relating to this competitive selection process prohibits WISDOT from entering into a contract while any protests or appeals are pending: Section 10.15(6), Wis. Admin. Code reads as follows:

“(6) State of procurements during protests. In the event of the filing of a timely notice of intent to protest, protest or appeal under sub. (1), the state shall not proceed further with the solicitation or with the award of the contract until a decision is rendered in response to the protest or appeal, or unless the secretary [of the Department of Administration], after consultation with the head of the contracting agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.”

WISDOT desires to build the capacity of Disadvantaged Business Enterprises and other small contractors to competitively participate in upcoming major transportation work. It is in the interest of the public to promote healthy competition and entry of businesses into this field of work. WISDOT intends to ensure that the contract for these services is entered into only in the best interests of the State in a manner that maintains the integrity of the competitive public contracting process, and to insure the public receives the best work at the most reasonable price. Competitive public contracting laws and rules are to be construed for the benefit of the public, not to serve the interests of individual competitors. In order to eliminate any appearance of unfairness, to allow for clarification of proposals in the future, and to expedite the acquisition of services without further delays pending appeals, WISDOT rejects all bids and will issue a new Request for Proposals. The intent of the RFP will, in all probability, be to contract for a Disadvantaged Business Enterprise (DBE) Development program targeted at the Marquette Interchange work and, in all likelihood, other Southeast Wisconsin Freeway work of WISDOT, consistent with the schedule of work presently anticipated. WISDOT desires to increase and further develop the capacity of DBE firms for the purpose of participating in all of this work.

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best interests of the State in a manner that maintains the integrity of the competitive public contracting process, and to insure the public receives the best work at the most reasonable price. Competitive public contracting laws and rules are to be construed for the benefit of the public, not to serve the interests of individual competitors. In order to eliminate any appearance of unfairness, to allow for clarification of proposals in the future, and to expedite the acquisition of services without further delays pending appeals, WISDOT rejects all bids and will issue a new Request for Proposals. The intent of the RFP will, in all probability, be to contract for a Disadvantaged Business Enterprise (DBE) Development program targeted at the Marquette Interchange work and, in all likelihood, other Southeast Wisconsin Freeway work of WISDOT, consistent with the schedule of work presently anticipated. WISDOT desires to increase and further develop the capacity of DBE firms for the purpose of participating in all of this work.



James S. Thiel, General Counsel
State Bar #1012582
Wisconsin Department of Transportation
P.O. Box 7910
Madison, WI 53707-7910
608/266-8928

Dated this 25th day of February 2003.

List of Exhibits:

- Exhibit A: RFP #255079 Score Sheets
- Exhibit B: WISDOT's rejection letter of November 8, 2002 to African American Chamber of Commerce
- Exhibit C: African American Chamber of Commerce letter of November 21, 2002 to WISDOT, protesting the award to 4N Consultants
- Exhibit D: Counsel for 4N Consultants letter of January 13, 2003 to WISDOT stating that Jaya Sharma had no involvement in preparation of the RFP
- Exhibit E: Progressive Training Consultants, Inc.'s letter of November 21, 2002 to WISDOT, protesting the award to 4N Consultants

**REQUEST FOR PROPOSAL #255079
TOTAL SCORES**

<u>PROPOSER</u>	<u>AVERAGE TECH SCORE</u>	<u>COST SCORE</u>	<u>TOTAL SCORE</u>
4N Consultants/d-Business	779	85	864
Aragon Mgmt. & Tech. Trng	549	100	649
B-TEAM Structural Management	446	87	533
DAAR Engineering	492	88	580
Heartland Information Research	464	90	554
Progressive Training Consultants	641	78	719
SFS Group Ltd.	656	90	746
Spirit Winds Consulting	312	93	405

**REQUEST FOR PROPOSAL #255079
FINAL RANKING**

<u>PROPOSER</u>	<u>TOTAL SCORE</u>
1) 4N Consultants/d-Business	864
2) SFS Group Ltd.	746
3) Progressive Training Consultants	719
4) Aragon Mgmt. & Technical Training	649
5) DAAR Engineering	580
6) Heartland Information Research	554
7) B-TEAM Structural Management	533
8) Spirit Winds Consulting	405

EXHIBIT

A

REQUEST FOR PROPOSAL #255079 **EVALUATION COMMITTEE SCORE SHEETS SUMMARY**

	EVALUATOR SCORE						
	#1	#2	#3	#4	#5	#6	AVG
PROPOSER							
4N Consultants/d-Business							
Item 5.1	100	90	83	95	85	85	
Item 5.2	115	120	120	130	130	150	
Item 6.1	350	330	215	281	290	350	
# Item 6.2.1	#200	170	155	161	200	200	
Item 6.2.2	100	80	45	81	85	75	
Total	865	790	618	748	790	860	779
Aragon Mgmt & Tech Training							
Item 5.1	100	60	65	20	90	100	
Item 5.2	125	60	75	30	120	65	
Item 6.1	330	145	125	70	300	280	
Item 6.2.1	110	90	120	45	180	165	
Item 6.2.2	90	40	65	45	81	100	
Total	755	395	450	210	771	710	549
B-TEAM Structural Mgmt.							
Item 5.1	70	60	47	60	83	100	
Item 5.2	55	80	90	90	125	105	
Item 6.1	145	180	116	141	280	75	
Item 6.2.1	50	70	80	100	185	50	
Item 6.2.2	20	40	40	21	90	30	
Total	340	430	373	412	763	360	446
DAAR Engineering							
Item 5.1	97	85	72	21	60	75	
Item 5.2	140	100	110	31	91	150	
Item 6.1	280	200	142	71	220	200	
Item 6.2.1	130	80	85	40	120	50	
Item 6.2.2	100	40	55	20	60	25	
Total	747	505	464	183	551	500	492
Heartland Information Research							
Item 5.1	60	40	40	40	45	80	
Item 5.2	120	50	75	40	95	125	
Item 6.1	280	160	180	71	75	300	
Item 6.2.1	105	100	100	41	45	200	
Item 6.2.2	75	40	45	41	25	90	
Total	640	390	440	233	285	795	464
Progressive Training Consultants							
Item 5.1	100	90	71	75	90	85	
Item 5.2	120	90	75	60	139	140	

Item 6.1	305	250	185	141	310	300	
Item 6.2.1	125	160	130	90	200	155	
Item 6.2.2	75	60	45	40	90	50	
Total	725	650	506	406	829	730	641

SFS Group

Item 5.1	70	85	79	85	80	100	
Item 5.2	75	130	140	100	120	120	
Item 6.1	175	340	232	211	250	325	
# Item 6.2.1	# 60	170	130	121	175	200	
Item 6.2.2	40	65	50	71	75	60	
Total	420	790	631	588	700	805	656

Spirit Winds Consulting

Item 5.1	48	50	22	21	25	25	
Item 5.2	60	60	60	31	35	35	
Item 6.1	130	160	103	70	135	85	
Item 6.2.1	30	90	120	41	120	65	
Item 6.2.2	25	60	65	21	45	35	
Total	293	420	370	184	360	245	312

Rejected Proposals

African American Chamber of Commerce:

Did not submit response to section 4.0 Mandatory Requirements; did not submit response to 6.2 Work Plan & Timetable; did not organize the proposal as requested in section 2.4.

Community-Based Employment & Referral Services:

Did not submit response to section 6.2 Work Plan & Timetable; did not organize the proposal as requested in section 2.4.

Wisconsin Department of Transportation

Purchasing
4802 Sheboygan Ave., Room 751
P O Box 7396
Madison, WI 53707-7396

November 8, 2002

FAX: 608-267-3609

DESTER MARTIN
AFRICAN AMERICAN CHAMBER
OF COMMERCE
6203 W CAPITOL DRIVE
MILWAUKEE WI 53216

SUBJECT: RFP #255079
DBE Business Development Program—Marquette Interchange & SE Wisconsin
Freeway Work

The Wisconsin Department of Transportation has completed the evaluation of the above listed request for proposal. We have determined that your proposal is not acceptable. Section 4.0 and 6.2 of the RFP were not responded to within your proposal. Also, the organization and format of the proposal did not follow what was required under section 2.4 of the RFP. Therefore, your proposal was not evaluated.

It is our intent to award this contract to:

4N Consultants
(dba) d-Business Consultants
1907 Sherman Avenue, Suite 15
Madison, WI 53704

This letter is the notice of intent to contract and does not constitute a contractual commitment. Evaluation scores summary is attached.

Thank you for participating in this request for proposal process.

Sincerely,

Diane E. Sachse
Purchasing Agent Senior
Wisconsin Dept. of Transportation

Attachment

EXHIBIT

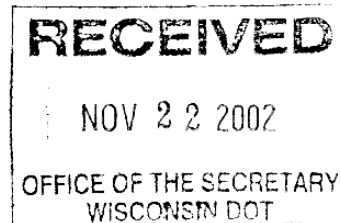
B



**African American Chamber of Commerce
Of Greater Milwaukee
6203 W. Capitol Drive
Milwaukee, Wisconsin 53216
Phone: (414) 462-9450 • FAX (414) 462-9452**

November 21, 2002

Mr. Thomas E. Carlsen
Secretary
WISCONSIN DEPARTMENT OF TRANSPORTATION
4802 Sheboygan Avenue - P.O. Box 7910
Madison, WI 53707



Re: Protest – RFP #255079
DBE Business Development Program – Marquette Interchange & SE Wisconsin Freeway Work

Dear Secretary Carlsen:

WisDOT Standard Terms and Conditions included as part of the RFP

3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP

- 3.1 Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the State.

To intend to award of this contract to 4N Consultants group, owned by Jaya Sharma and others with direct contact and policy making, is in violation of section 3.1 above:

1. Jaya Sharma is an Attorney and a paid consultant with the WisDOT DBE Support Services as a Technical Consultant to provide legal consulting services to the SE Marquette Interchange Project (MIP) Disadvantaged Business Enterprise (DBE) Program Advisory Committee, as well as taking notes, developing minutes of the Sub-Committee meetings, and writing up recommendations and reports.
2. Ms. Sharma created documents to build capacity of DBE firms that were forwarded to WisDOT Acting Secretary's office, which resulted the issuance of the RFP.
3. Ms. Sharma has relationships with the panelists and the proposals evaluation members, of which contacts and conversations could have taken place.

***Part of The Whole ... For A Better Business Community
"Become a Sharing Partner"***

EXHIBIT

C

Wisconsin Administrative Code

10.8(7)(c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;

An award to the proposer should not be approved because there is evidence of collusion or fraud involving the proposer.

Ms. Jaya Sharma is President of 4-N Consultants, Inc., which is a member of the joint venture proposer. Ms. Sharma is also an attorney, licensed to practice in Wisconsin. Further, Ms. Sharma serves as counsel and as a paid consultant, and the only paid staff, to the Marquette Interchange Advisory Committee (Advisory Committee). During her tenure with the Advisory Committee, Attorney Sharma publicly provided legal advice to the Advisory Committee.

Alderman Terrance Herron, elected City of Milwaukee Official/District 2 and co-chairman of the Advisory Committee, expressed interest in competing for a contract to provide services under the RFP. After publicly disavowing interest in the contract under the RFP, Alderman Herron also requested and secured written references for the proposer.

The work had already begun to create unfair competition for the proposal, amounting to collusion. However, around October 5, 2002, Alderman Herron publicly withdrew himself from the RFP.

10.10 Disclosure

An award to the proposer should not be approved until WisDOT complies with the requirements of 10.10 of the Administrative Code regarding Disclosure.


The Administrative Code requires that the proposer include a written statement that discloses any relevant information that the proposer has a contract for contractual services with the procuring agency. Further, the Administrative Code requires that the procuring agency review the statement of disclosure and prepare a written determination on whether or not the information disclosed interferes with fair competition and whether or not, in spite of the information disclosed, awarding of a contract to the proposer will be in the best interest of the State of Wisconsin.



The African American Chamber of Commerce (AACC) of Greater Milwaukee would like to see:

- (a) a new supportive capacity building program,
- (b) the chosen program for industry development,
- (c) these efforts resulting in the true expansion and capacity building of DBE firms in Milwaukee and Southeastern Wisconsin.

Taxpayers would like to see the public dollar made available and spent to support a better quality of life for Southeastern Wisconsin citizens.



Dester Martin, *Chairman, Executive Committee*

AFRICAN AMERICAN CHAMBER OF COMMERCE OF GREATER MILWAUKEE

JACK D. WALKER
JAMES K. PEASE, JR.
JAMES K. RUHLY
THOMAS R. CRONE
PHILIP J. BRADBURY
JOANN M. HART
SUSAN C. SHEERAN
DOUGLAS E. WITTE
DANA J. ERLANDSEN
DEVON R. BAUMBACH
DANIEL D. BARKER
JENIFER L. KRAEMER
ANGELA BLACK

MELLI, WALKER, PEASE & RUHLY, S.C.

A SERVICE CORPORATION

ATTORNEYS AT LAW

TEN EAST DOTY, SUITE 900

P.O. BOX 1664

MADISON, WISCONSIN 53701-1664

SENDERS E-MAIL ADDRESS: PHILBRADBURY@MELLIWALKER.COM

JOSEPH A. MELLI
OF COUNSEL

JOHN H. SHIELS
(1910 - 1995)

TELEPHONE (608) 257-4812
TELEFAX (608) 256-7470

January 13, 2003

RECEIVED

JAN 16 2003

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. James Thiel
Office of General Counsel
Wisconsin Department of Transportation
4802 Sheboygan Avenue
Madison, WI 53705

WISCONSIN DOT
OFFICE OF GENERAL COUNSEL

Re: RFP No. 255079; DBE Business Development
Program-Marquette Interchange
Project & SE Wisconsin Freeway Work

Dear Mr. Thiel:

This letter is in reference to the Department's proposed award of a contract to 4N Consultants, Inc. d/b/a d-Business Development Consultants, LLC (hereinafter "BDC") as set forth in Diane E. Sasche's November 8, 2002 letter. We request that the Department proceed with the award of the contract to BDC. The record before the Department shows that the proposal submitted by BDC best serves the Department's interest. The contract should be awarded accordingly. Any contrary action would place the integrity of the Department's contracting process in doubt, leaving open the possibility for future challenges based on unsubstantiated allegations and innuendo.

The letters protesting the Department's notice of intent to award the contract to BDC raise several unsupported claims, including that BDC failed to comply with the mandatory requirements of the RFP and that the award to BDC is improper because of a conflict of interest or other impropriety. These claims have no merit, for several reasons.

As to the substance of the proposals, BDC's proposal included all of the mandatory requirements of the RFP, as set forth in Section 4.0 of the RFP. Questions raised regarding the responsiveness of BDC's proposal do not relate to any mandatory requirements. Any deficiencies (we do not believe there are any) are of an insignificant nature. The Department's acceptance of the proposal is an acknowledgment that the proposal meets the criteria set forth

EXHIBIT

D

Mr. James Thiel
January 13, 2003
Page 2

in the RFP. We also understand that the Department accepted proposals and awarded a contract in response to a Capacity Building RFP (preceding this current one), which provided financial and background information similar in nature to the information submitted by BDC. Of course, if there are any deficiencies, the Department has the discretion to waive any non-compliance or seek additional information to address any concerns. The objections to the award ask the Department to apply a higher standard to BDC's proposal than what is called for in the RFP.

The procedure followed by the Department in issuing the request for proposals and evaluating the submitted proposals shows no hint of bias, conflict of interest or other impropriety. Ms. Sharma was not involved in preparation of the RFP. The Department's process was public and open to all potential proposers. Indeed, the Department, at a proposers' pre-bid conference, went so far as to provide all those in attendance with copies of the Capacity Building model developed by the DBE Advisory Committee which formed the basis of the RFP. Potential bidders not present at the meeting were then provided with this information by the Department via first class mail. At the same pre-bid meeting, the Department also informed all proposers that meeting minutes and other work products of the Committee were available to all interested parties upon request. SFS Group Ltd. and PTC Consultants who are challenging and questioning the fairness of the RFP process, were present at most meetings of the Marquette DBE Advisory Committee and, therefore, had opportunities of providing input to the Committee's deliberations. In addition, Richard Bowles, the principal of PTC Consultants Inc., was a voting member on the Marquette DBE Advisory Committee representing the National Association of Minority Contractors. It is apparent that all proposers had equal access to pertinent information which could be used to respond to the RFP.

The evaluation process had similar safeguards to protect against bias or unfairness. A review of the evaluation process shows that BDC's proposal was selected on the basis of unanimous approval by the six evaluators. It stretches the imagination to believe that the consistent and overwhelming favorable evaluation was somehow the product of a conflict of interest or bias.

The alleged conflicts of interest are based on information which Ms. Sharma freely and properly disclosed in BDC's proposal. This information was known to the Department at the time the proposals were submitted. The Department selected BDC's proposal because it believed its best interest is served in having BDC undertake this project. As the evaluation results show, the Department's interest would not be served by the selection of an alternative proposal which is clearly and objectively of a lesser quality than BDC's proposal. The Department appears to agree with this position by its decision to issue the Notice of Intent to Award. In the absence of some mistake or fraud, the Department should proceed with the contract award as anticipated by the Notice of Intent.

Mr. James Thiel
January 13, 2003
Page 3

If the Department chooses to rebid the contract, BDC is placed at a disadvantage because other competitors now have access to its winning proposal. That result is contrary to the purpose behind the Department's contracting process.

The challenges to the award appear to be primarily based on allegations of conflict of interest and bias involving Ms. Jaya Sharma and her contacts with the Marquette Interchange Advisory Committee and former Milwaukee Alderman Terrance Herron. Ms. Sharma's contacts with the Advisory Committee were disclosed, and known to the Department, and do not result in a conflict of interest in this matter. The information provided by the protestors does not establish a conflict of interest or support any finding of bias or other impropriety.

Moreover, the information provided by SFS Group's counsel with regard to Mr. Herron is based on hearsay and is of questionable validity. Even if accepted on its face, the information does not establish any basis for the Department not to award the contract to BDC.

We recently received from your office copies of the December 5, 2002 and December 9, 2002 letters submitted by Attorney McCardell on behalf of SFS. We have investigated the allegations set forth in those letters and, based on the initial results of our investigation, question the accuracy of the information provided and the practices used to collect the information.

For example, the letters assert that "the relationship between Ms. Sharma and Chairman Herron includes a direct business relationship." We have found no evidence of "a direct business relationship." Ms. Sharma has never employed Mr. Herron or been employed by Mr. Herron or had any contract or other business relationship with Mr. Herron.

The letters also assert that "Mr. Herron has also served in a business- related capacity" for d-Business Development Consultants, LLC and "has an ongoing business relationship with DevCorp..." Attorney McCardell submits the affidavit of Thomas Wagner in support of those allegations. Our investigation shows that DevCorp has no "business relationship" with Mr. Herron. Indeed, read carefully, Mr. Wagner's affidavit provides no evidence (hearsay or otherwise) of a "business relationship." DevCorp's only contact in Wisconsin was as a subcontractor to Ms. Sharma in 2000 for work on the Milwaukee County DBE program. DevCorp has no direct contact or business relationship with Mr. Herron or any other government officials or agencies in Wisconsin.

I understand that Mr. Carlton Lewis of DevCorp is willing to provide an affidavit or testify (on personal knowledge) that neither he nor DevCorp have (or have ever had) any business relationship with Mr. Herron. For what it is worth, he will also testify that a person

Mr. James Thiel
January 13, 2003
Page 4

(presumably Mr. Wagner) contacted him in early December and represented that he was working with a "construction management company." The person did not identify himself as a private investigator working for Attorney McCardell or SFS. The person said that he had been referred to DevCorp by Mr. Herron. He then proceeded to ask questions about DevCorp's relationship with Mr. Herron. Mr. Lewis made no statements which would lead any reasonable person to conclude that Mr. Herron and DevCorp had any relationship other than that both were familiar with each other's name and positions.

In the absence of a showing of a conflict of interest or bias, I don't see the need to burden the Department with affidavits or other testimony. The record before the Department, particularly Mr. Wagner's affidavit, does not support the allegations made by SFS and its counsel. In the event that the Department believes that the allegations merit some fact-finding, I request that the Department schedule a hearing to allow the parties the opportunity to examine witnesses under oath.

Thank you for considering our position on this matter. Please contact me if you have any questions or need additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip J. Bradbury", written over a horizontal line.

Philip J. Bradbury

PJB/cac

cc: 4N Consultants, Inc. d/b/a d-Business Development Consultants, LLC (via mail)
William E. McCardell (via mail)



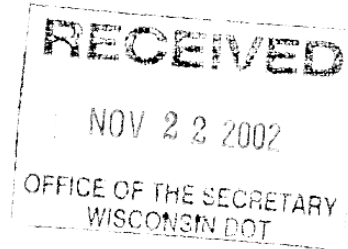
PROGRESSIVE TRAINING CONSULTANTS, INC.

MILWAUKEE OFFICE: 532 East Capitol Drive * Milwaukee, WI. 53212 * Tel: (414) 332-9500 * Fax (414) 332-9718
CHICAGO OFFICE: 815 W. Van Buren, Suite 315, Chicago, IL. 60607 * Tel: (312) 492-7700 * Fax (312) 492-7705

2002-0596
DBM

November 21, 2002

Mr. Thomas E. Carlsen, Acting Secretary
Wisconsin Department of Transportation
4802 Sheboygan Avenue
P.O. Box 7910
Madison, WI 53707



Re: PROTEST OF THE INTENT TO AWARD A CONTRACT FOR RFP # 255079

Dear Mr. Carlsen:

Enclosed please find Progressive Training Consultants, Inc. formal protest to the Wisconsin Department of Transportation's intent to award the contract to D-Business Consultants, LLC for the above-referenced RFP. In addition, Progressive Training Consultants, Inc. is formally requesting the following information pursuant to the Wisconsin Administrative Code:

- Any and all written or oral instructions given to the proposal evaluation committee
- Any and all correspondence between the Marquette Interchange Committee Co-Chairs and WisDOT.
- A copy of the evaluation committee's top 4 proposals (excluding Progressive Training Consultants, Inc.)
- Identification of the members of the evaluation committee.

Thank you in advance for your prompt reply to this request.

Respectfully yours,

Richard V. Bowles, President
Progressive Training Consultants, Inc.

EXHIBIT

E

PROTEST
of
PROGRESSIVE TRAINING CONSULTANTS, INC.

RFP #255079

November 21, 2002

Wisconsin Administrative Code

10.8 Competitive negotiation

10.8 (7)(a) Mathematical errors were made in scoring proposals;

An award to the proposer should not be approved because mathematical errors were made in scoring proposals.

The Notice of Intent to Award to D-B Development Consultants, LLC (DB) should not be approved because of mathematical errors in scoring their proposal. Review of DB's Cost Proposal clearly indicates that the \$412,011.38 used to score their Cost Proposal is in error. DB listed \$412,011.38 as a "Base Proposal", followed by "Proposed Allowances for Technical Assistance". These allowances include substantial areas of technical assistance (accounting and legal), as well as public notices and advertising. These additional allowances totaled \$95,000, subject to negotiation. The allowances amount to approximately 23% of the Base Proposal price. This additional amount for critical technical assistance services was not added back into DB's cost for scoring purposes.

10.8.(7)(b) The award was recommended to a proposer who should have been disqualified as not responsive to all mandatory requirements of the RFP;

The proposer should have been disqualified as not responsive to all mandatory requirements of the RFP.

The proposer did not provide financial stability documentation as required. The proposer provided neither financial statements nor a letter from proposer's bank to substantiate financial stability. The proposer's joint venture comprised two corporations, yet the financial statements of neither corporation was provided to substantiate the financial stability of proposer. Rather, the proposer provided a letter from the Wauwatosa Saving Bank attesting to the personal financial stability of Mr. David Stokes. The letter from Wauwatosa Savings Bank does not substantiate the financial stability of the joint venture firm, DB, nor either of the corporations in the joint venture.

10.8(7)(c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;

An award to the proposer should not be approved because there is evidence of collusion or fraud involving the proposer.

Ms. Jaya Sharma is President of 4-N Consultants, Inc., which is a member of the joint venture proposer. Ms. Sharma is also an attorney, licensed to practice in Wisconsin. Further, Ms. Sharma serves as counsel and as a paid consultant, and the only paid staff, to the Marquette Interchange Advisory Committee (Advisory Committee). During her tenure with the Advisory Committee, Attorney Sharma publicly provided legal advice to the Advisory Committee. Further, Attorney Sharma was instrumental in developing the model for disadvantaged business enterprise development, from which the RFP was generated.

Alderman Terrance Herron served as Co-Chairman of the Advisory Committee. State Representative G. Spencer Coggs also served as Co-Chair of the Advisory Committee. Without the knowledge of Co-Chair Coggs, and with the assistance of Attorney Sharma, Co-Chair Herron corresponded with WisDOT staff to secure funding and the issuance of the subject RFP. Additionally, official members of the Advisory Committee were not informed of the issuance of the subject RFP, nor funding, until after the RFP was publicly released.

The actions of Attorney Sharma and Co-Chair Herron is evidence of collusion or fraud and, therefore, an award to the proposer should not be approved.

10.8(7)(d) The evaluation committee failed to follow the evaluation criteria as set forth in the RFP;

An award to the proposer should not be approved because the evaluation committee failed to follow the evaluation criteria as set forth in the RFP.

The evaluation committee erroneously scored the proposer's Cost Proposal based on a "Base Proposal" price, excluding the cost of "Proposed Allowances for Technical Assistance". The evaluation committee erroneously excluded \$95,000 in cost in its

evaluation of the proposer's Cost Proposal, thereby, not following the evaluation criteria as set forth in the RFP.

10.8(7)(e) Violations of this chapter or the statutes have occurred.

An award to the proposer should not be approved because there have been violations of the Wisconsin Administrative code.

The proposer has violated 10.8(7)(a)-(d) of the Wisconsin Administrative Code, pertaining to Contract Award.

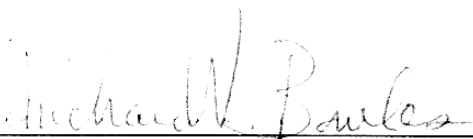
10.10 Disclosure

An award to the proposer should not be approved until WisDOT complies with the requirement of 10.10 of the Administrative Code regarding Disclosure.

The Administrative Code requires that the proposer include a written statement that discloses any relevant information that the proposer has a contract for contractual services with the procuring agency. Further, the Administrative Code requires that the procuring agency review the statement of disclosure and prepare a written determination on whether or not the information disclosed interferes with fair competition and whether or not, in spite of the information disclosed, awarding of a contract to the proposer will be in the best interest of the State of Wisconsin.

Ms. Jaya Sharma served as counsel and a paid consultant to the Advisory Committee. Before an award of a contract to the proposer, WisDOT is required to review Attorney Sharma's disclosure of her contractual relationship with the agency and determine whether the disclosure is sufficient, and provide a written statement whether or not the information disclosed interferes with fair competition and whether or not awarding a contract to the proposer is in the best interests of the state. Additionally, an award should not be made to the proposer until after the Department of Administration reviews WisDOT's determination on disclosure by the proposer.

BY:



Richard W. Bowles, President